

12/08/09 9:53:42
OK T BK 3.112 PG 170
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

12/08/09 9:54:06
OK P BK 135 PG 191
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

SD
This Instrument Prepared By
And Return To:
Timothy D. Rainey
MS Bar # 102102
Hal C. Stanley, P.C.
7515 Corporate Centre Drive
Germantown, TN 38138
901-754-9994

Indexing Instructions: Located in the northwest quarter of Section 19, Township 1
South, Range 7 West, DeSoto County, Mississippi.

Tax Parcel Numbers: 1-07-4-19-24-0-00001.00
1-07-4-19-24-0-00002.00

MODIFICATION ASSIGNMENT & ASSUMPTION AGREEMENT

THIS AGREEMENT made and entered into on this 19th day of ~~September~~ ^{November}, 2009, to be effective
as of the 10th day of November, 2009, by and between:

LENDER:
First Capital Bank
7575 Poplar Avenue
Germantown, TN 38138
(901)-737-5453

ASSIGNEE:
BAR II, LLC,
a Tennessee limited liability company
7515 Corporate Centre Drive
Germantown, TN 38138
(901)-754-9994

ASSIGNOR:
R J Investments, LLC
a Mississippi limited liability company
195 S. Center Street
Collierville, TN 38018
(901) 331-6040

GUARANTORS:
Robert Allen
Bernard Farber
Anwar Aman
7515 Corporate Centre Drive
Germantown, TN 38138
(901)-754-9994

WITNESSETH:

WHEREAS, on the 18th day of May, 2006, Assignor executed the following documents: (1) a promissory note (the "Note") payable to Lender in the principal sum of One Million Four Hundred Thousand and no/100 dollars (\$1,400,000.00), (2) a land deed of trust, securing the Note and recorded in the Desoto County Chancery Court Clerk's Office at Book 2486, Page 563, (the "Deed of Trust"), (3) an assignment of rents and leases securing the Note and recorded in the Desoto County Chancery Court Clerk's Office at Book 114, Page 202, (the "Assignment of Rents"), and (4) other related documents. The Note, the Deed of Trust, the Assignment of Rents and the other related documents are hereinafter collectively referred to as the "Loan Documents";

WHEREAS, the Deed of Trust pledged the following real property (the "Property"):

SEE EXHIBIT "A" ATTACHED HERETO FOR A DESCRIPTION OF SAID
PROPERTY.

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BA
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WHEREAS, it was the intent of Assignor and Lender that the Deed of Trust pledge the following real property (the "Corrected Property Description"):

DK P BK 133 PG 172

SEE EXHIBIT "B" ATTACHED HERETO FOR A DESCRIPTION OF SAID PROPERTY,

but due to an inadvertent error in the Deed of Trust an incorrect legal description was used;

WHEREAS, Assignor, Lender and Assignee desire to modify the Deed of Trust for the purpose of correcting the inadvertent error so that the property encumbered by the Deed of Trust shall be the real property described by the Corrected Property Description;

WHEREAS, as of the effective date hereof the principal balance of the Note is One Million Three Hundred Twenty Six Thousand Six Hundred Thirty Three and 08/100 Dollars (\$1,326,633.08);

WHEREAS, Assignor has agreed to sell the real property described by the Corrected Property Description to Assignee and as part of that transaction, Assignor has agreed to assign to Assignee all of Assignor's rights, duties and obligations in and to the Loan Documents;

WHEREAS, Assignee has agreed to purchase the real property described by the Corrected Property Description from Assignor and as part of that transaction, Assignee has agreed to assume all of Assignor's rights, duties and obligations in and to the Loan Documents;

WHEREAS, Lender is willing to permit the assignment by Assignor of all of Assignor's rights, duties and obligations in and to the Loan Documents to Assignee; and

WHEREAS, Assignor, Assignee and Lender are in agreement that this Modification, Assignment And Assumption Agreement should: (i) amend and correct the legal description used in the Deed of Trust so that the real property encumbered by the Deed of Trust is the real property described by the Corrected Property Description; (ii) permit the assignment by Assignor, and the Assumption by Assignee of all of Assignor's rights, duties and obligations in and to the Loan Documents, (iii) release Jim Curtis from all of his duties and obligations as a guarantor of the Note and the Loan Documents and substitute Anwar Aman and Bernard D. Farber as substitute limited guarantors in his place, and (iv) release Robert Allen from his original guaranty agreement and replace Robert Allen's original guaranty agreement with a substitute, limited guaranty agreement.

NOW THEREFORE, in consideration of the premises, the sum of Ten Dollars (\$10.00) cash in hand paid and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. The Deed of Trust is amended so that the description of the real property encumbered by the Deed of Trust shall be the real property described by the Corrected Property Description.
2. Assignor assigns all of its right, title and interest in and to the Loan Documents together with all of its duties and obligations thereunder to Assignee
3. Assignor represents, warrants and covenants to Assignee that there exists no event of default on the part of Assignor under the Loan Documents nor any act or omission on the part of Assignor which, with the passing of time, would constitute an event of default on the part of Assignor. Furthermore, to the best of Assignor's knowledge, Lender has complied with all of Lender's obligations and duties provided for in the Loan Documents.
4. Assignee assumes all of Assignor's right, title and interest in and to the Loan Documents together with all of Assignor's duties and obligations thereunder.
5. Lender acknowledges, confirms and approves the assignment herein by Assignor of all of Assignor's interest in and to the Loan Documents to Assignee and Assignee's assumption of same. Furthermore, Lender confirms that, to the best of Lender's knowledge, there exists no event of default on the part of Assignor under the Loan Documents nor any act or omission on the part of Assignor which, with the passing of time, would constitute an event of default on the part of Assignor.
6. Lender releases Jim Curtis as a guarantor under the Loan Documents and shall deliver to him his original, signed guaranty agreement upon receipt of an executed, limited guaranty agreement (the "Replacement Guaranties") from Anwar Aman and Bernard D. Farber in the amount of \$445,502.44, each.

[Handwritten signatures and initials]

7. Lender releases Robert Allen from his obligations under his original guaranty agreement and shall deliver to him his original, signed guaranty agreement upon receipt of an executed, limited guaranty agreement (the "Robert Allen Replacement Guaranty") in the amount of \$445,502.44.
8. The lien of the Deed of Trust is hereby so extended that same shall not be barred by any applicable statute of limitations until ten (10) years from the maturity date of the Note.
9. Assignee shall pay the indebtedness evidenced by the Note and keep and perform all the terms, conditions and covenants contained in the Loan Documents. Lender may exercise, at its option, any right or privilege granted in the Loan Documents or by law. The terms, conditions and covenants of the Loan Documents shall remain in full force and effect and shall in no manner be affected by the execution of this Agreement.
10. The execution of this Agreement does not discharge Assignor or any of the obligors, sureties, endorsers or guarantors of the Note, for any act or omission occurring prior to the date of this Agreement on the part of Assignor or said obligors, sureties, endorsers or guarantors and all rights of Lender against any or all of the same are expressly reserved.
11. Assignee expressly waives all equity of redemption, statutory right of redemption, homestead, marital rights, and all other rights and exemptions of every kind concerning the Property.
12. A full release of the Deed of Trust shall constitute a release of this Agreement.
13. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, next of kin, successors, assigns, transferees and grantees, and shall be governed and construed in accordance with the laws of the State of Mississippi.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date first above written.

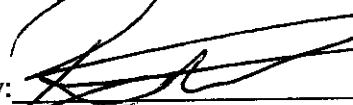
LENDER:

FIRST CAPITAL BANK

By: 
Richard V. Whaley, Vice President

ASSIGNEE:

BAR II, LLC


By: 
Robert Allen, Chief Manager


ASSIGNOR:

RJ INVESTMENTS, LLC

By: 
Jim Curtis, Chief Manager

GUARANTORS:


Robert Allen


Bernard D. Farber


Anwar Annan

STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, the undersigned authority in and for the said county and state, on this 20th day of November, 2009, within my jurisdiction, the within named Richard V. Whaley, who acknowledged that he is Vice President of First Capital Bank, a state chartered bank, and that for and on behalf of the said Bank, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

Notary Public

My Commission Expires

STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, the undersigned authority in and for the said county and state, on this 20th day of November, 2009, within my jurisdiction, the within named Robert Allen, who acknowledged that he is Chief Manager of BAR II, LLC, a Tennessee limited liability company, and that for and on behalf of the said company, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

Notary Public

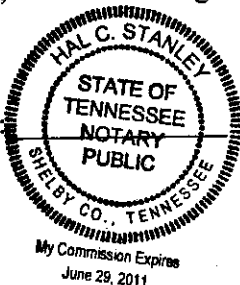
My Commission Expires

STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, the undersigned authority in and for the said county and state, on this 20th day of ~~September~~ November, 2009, within my jurisdiction, the within named Jim Curtis, who acknowledged that he is Chief Manager of R J Investments, LLC, a Mississippi limited liability company, and that for and on behalf of the said company, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

Notary Public

My Commission Expires

STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, the undersigned authority in and for the said county and state, on this 20th day of November, 2009, within my jurisdiction, the within named Robert Allen, Bernard Farber, and Anwar Aman, who acknowledged that they executed the above and foregoing instrument.

Notary Public

My Commission Expires

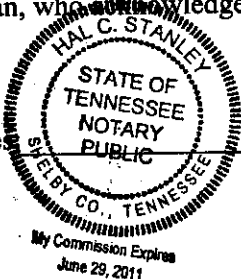


EXHIBIT "A"

LOT 2 - LAKEVIEW BUSINESS CENTER, SECTION 2

A tract of land situated in the northwest Quarter of Section 19, Township 1 South, Range 7 West in Desoto County, Mississippi being part of the RJ Investments LLC property as recorded in Book 502, Page 513 in the Chancery Clerk's Office in Desoto County, being Lot 2 of the proposed Lakeview Business Center, Section 2 and being more particularly described as follows:

Commencing at the northwest corner of said Section 19 being the intersection of the centerline of Stateline Road (R.O.W. varies) and the centerline of Airways Road (106' R.O.W.); thence South 00 degrees 08 minutes 58 seconds West along the west line of Section 19 and the centerline of Airways Road a distance of 372.92 feet to a point; thence South 89 degrees 51 minutes 02 seconds East a distance of 53.00 feet to the POINT OF BEGINNING in the east line of Airways Road, said point being the southeast corner of Lot 1, Section 1 of Horizon Travel Center as recorded in Plat Book 94, Page 37 in said Chancery Clerk's Office; thence South 89 degrees 56 minutes 03 seconds East along the south line of Lot 1 a distance of 290.37 feet to a point; thence South 17 degrees 15 minutes 12 seconds East a distance of 155.95 feet to a point; thence South 89 degrees 54 minutes 00 seconds West a distance of 337.01 feet to a point in the east line of Airways Road; thence North 00 degrees 08 minutes 58 seconds East along said east line a distance of 149.85 feet to the POINT OF BEGINNING and containing 46,866 square feet or 1.076 acres of land, more or less.

LOT 3 - LAKEVIEW BUSINESS CENTER, SECTION 2

A tract of land situated in the northwest Quarter of Section 19, Township 1 South, Range 7 West in Desoto County, Mississippi being part of the RJ Investments LLC property as recorded in Book 502, Page 513 in the Chancery Clerk's Office in Desoto County, being Lot 3 of the proposed Lakeview Business Center, Section 2 and being more particularly described as follows:

Commencing at the northwest corner of said Section 19 being the intersection of the centerline of Stateline Road (R.O.W. varies) and the centerline of Airways Road (106' R.O.W.); thence South 00 degrees 08 minutes 58 seconds West along the west line of Section 19 and the centerline of Airways Road a distance of 522.77 feet to a point; thence South 89 degrees 51 minutes 02 seconds East a distance of 53.00 feet to the POINT OF BEGINNING in the east line of Airways Road, said point being the southwest corner of Lot 2 of the proposed Lakeview Business Center, Section 2; thence North 89 degrees 54 minutes 00 seconds East a distance of 337.01 feet to a point; thence South 17 degrees 15 minutes 12 seconds East a distance of 108.28 feet to a point; thence South 72 degrees 44 minutes 48 seconds West a distance of 157.80 feet to a point; thence South 89 degrees 54 minutes 00 seconds West a distance of 218.82 feet to a point; thence North 00 degrees 08 minutes 58 seconds East a distance of 150.00 feet to the POINT OF BEGINNING and containing 50,230 sq. square feet or 1.153 acres of land, more or less.

[Handwritten signatures]

EXHIBIT "B"
CORRECTED PROPERTY DESCRIPTION

Lots 1 and 2 of the Lakewood Business Center, Section 2, located in the northwest quarter of Section 19, Township 1 South, Range 7 West, DeSoto County, Mississippi, as recorded in Plat Book 110, Page 41 in the Office of the Chancery Clerk, DeSoto County, Mississippi.

Indexing Instructions: Located in the northwest quarter of Section 19, Township 1 South, Range 7 West, DeSoto County, Mississippi.

Tax Parcel Numbers: **1-07-4-19-24-0-00001.00**
 1-07-4-19-24-0-00002.00

Handwritten initials:
A E
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